

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Appeal No.1321 of 2006

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Between:

Khaja Naseeruddin and another

... Appellants

And

Commissioner, Survey, Settlement and
Land Records, Hyderabad and four others

... Respondents

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::JUDGMENT::

Counsel for the appellants

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: Shri M.V. Durga Prasad

Counsel for respondent No. 3

: Shri M.S.R. Subrahmanyam

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December 20, 2006

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Per G.S. Singhvi, CJ

This appeal is directed against order dated 17-11-2006 passed by the learned Single Judge in Writ Petition No. 15757 of 2006, whereby he declined to entertain the appellants prayer for quashing order dated 13-06-2005 passed by Commissioner, Survey, Settlement and Land Records, Hyderabad (respondent No. 1 herein) and order dated 08-06-2000 passed by Deputy Director, Survey and Land Records, Hyderabad (Urban) District (respondent No.2 herein).

The appellants claim to be the owners of plot No.8A comprised in Survey No. 403 of Shaikpet Village, Road No. 2, Banjara Hills, which falls within the limits of erstwhile Jubilee Hills Municipality. The District Collector is said to have granted them no objection in respect of 2,045 square meters of land in that plot. On 29-06-2005, the Municipal Corporation of Hyderabad is said to have given them permission to construct compound wall. At that stage, the appellant made an application for demarcation of the plot in question. Respondent No. 3 Messers Madan Mohanlal Shri Ram Private Limited also appears to have made similar application in respect of plot No.8. The Inspector of Survey, who is subordinate to respondent No. 2, issued notice to both the parties and then demarcated and fixed the boundaries of plot No. 8A. A panchayana was also prepared by him on 31-05-2005. After sometime, respondent No. 2 issued memo dated 08-06-2005, whereby he informed the appellants that the demarcation of plot No. 8A has been kept in abeyance until further orders. This was done on the basis of instructions issued by respondent No. 1 before whom respondent No. 3 filed petition dated 03-06-2005 with the complaint that demarcation of plot No. 8A has been undertaken without undertaking similar exercise for plot No. 8 belonging to it.

The appellants challenged the action of respondent Nos. 1 and 2 in putting the demarcation of plot No. 8A in abeyance by contending that the same is vitiated due to malafides. In the affidavit filed by Shri P. Malleswar Rao, GPA holder of the appellants, it was averred that plot No. 8A is duly recognised by the Government, whereas plot No. 8 is an unrecognised plot and is subject matter of dispute and, therefore, survey and demarcation of plot No. 8A could not be held in abeyance on the application made on behalf of

respondent No.3.

The learned Single Judge, after taking note of the averments contained in the respective pleadings felt that ends of justice would be met by directing respondent No. 1 to dispose of the appeal filed by respondent No. 3. The relevant extracts of the order passed by the learned Single Judge are reproduced below:

“Whenever a person seeks survey, a survey officer has to issue notice to all the parties disputed and registered holders of land effected and conduct survey. Against any order passed by survey officer, Section 11 of the Survey Act provides for an appeal to an appellate authority. The Commissioner of Survey and Land Records is admittedly the appellate authority and there is no fault on the part of the third respondent in filing appeal. As seen from the order passed by the second respondent on 08.06.2005, application made by the third respondent for survey of plot No.8 was pending before the MRO. However, survey and demarcation of plot No.8A was done in ignorance of pending application. For this reason, first respondent in his order observed that it is erroneous to demarcate the boundaries of plot No.8A when the petition for demarcation on adjoining plot No.8 is pending. Admittedly, the Deputy Director of Survey issued notices to the petitioners and third respondent. It is the case of the third respondent that after receiving notice of survey, dated 25.05.2005 on 26.05.2005, they produced necessary documents on 28.05.2005 within three days but the second respondent demarcated plot No.8A without considering those documents. This is not specifically denied in the reply affidavit. In this background, interlocutory order passed by first respondent keeping demarcation of plot No.8A in abeyance is unexceptionable. This Court, however, hastens to add that in a matter of this nature where there is a serious dispute regarding the area between private individuals as well as Government, so as to give quietus to such disputes, survey should be conducted properly after giving notice to all persons concerned, and surveyed plot should be demarcated in the

presence of concerned persons.

Having regard to the background and the above observations made by this Court, it would be proper for the first respondent to dispose of the appeal filed by third respondent as expeditiously as possible preferably within a period of eight weeks from the date of receipt of copy of this order. Insofar as W.P.No.15001 of 2006 is concerned, the MRO specifically denied the allegation of demolition and interference and therefore, this Court holds that W.P.No.15001 of 2006 is filed making allegations, which stand disproved.

We have heard Shri M.V. Durga Prasad, learned counsel for the appellants and Shri M.S.R. Subrahmanyam, learned counsel for respondent No. 3 at some length and perused the record.

In our opinion, the order under challenge does not suffer from any patent legal infirmity and we feel that ends of justice would be met by giving liberty to the appellants to raise all legally permissible objections to the very maintainability of the application/appeal filed by respondent No. 3 against the survey conducted by the competent authority in respect of plot No. 8A, with a further direction that the objections raised by the appellants shall be objectively considered and decided by assigning cogent reasons.

In view of the above, the appeal is disposed of with the direction that respondent No. 1 shall decide the appeal preferred by respondent No. 3 in terms of the direction given by the learned Single Judge i.e., within eight weeks from the date of receipt of copy of the order under challenge. While doing so, the officer concerned shall take cognisance of the objections which may be raised on behalf of the appellants and decide the same by passing a speaking order.

As a sequel to disposal of the appeal, WAMP No.2800 of 2006 filed by the appellants for interim relief is also disposed of as

infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

December 20, 2006
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